

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) 1:15CV506
)
)
\$39,956.45 IN U.S. CURRENCY)
SEIZED FROM BANK OF NORTH)
CAROLINA ACCOUNT ENDING IN)
3974, IN THE NAME OF RD)
JESSUP PROPERTIES, LLC, et al.,)
)
)
Defendants.)

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
v.) 1:15CV152
)
)
6407 MONNETT ROAD, CLIMAX,)
GUILFORD COUNTY, NORTH)
CAROLINA, WITH ALL)
APPURTENCES AND)
IMPROVEMENTS THEREON, et al.,)
)
)
Defendants.)

In the Matter of the Seizure of)
All funds on deposit at Bank)
of North Carolina in the) 1:15MJ32
account ending in number)
xx3974, in the name of RD)
Jessup Properties, LLC)

In the Matter of the Seizure of)
L4600 Kubota DT 4x4 Tractor) 1:15MJ33

In the Matter of the Seizure of)
All funds on deposit at Bank)
of North Carolina in the) 1:15MJ34
account ending in number)
xx3044, in the name of Gate)
City Transportation)

In the Matter of the Seizure of)
All funds on deposit at First)
Citizens Bank in the account) 1:15MJ35
ending in number xx8448, in)
the name of Gate City)
Transportation)

In the Matter of the Seizure of)
All funds on deposit at Bank)
of North Carolina in the) 1:15MJ36
account ending in number)
xx9565, in the name of C.D.)
and Roderick D. Jessup)

In the Matter of the Seizure of)
All funds on deposit at First)
Citizens Bank in the account) 1:15MJ37
ending in number xx7104, in)
the name of Gate City)
Transportation)

In the Matter of the Seizure of)
2012 Ford F-250,) 1:15MJ38
VIN 1FT7W2BT0CEC48613)

In the Matter of the Seizure of)
All funds on deposit at Bank)
of North Carolina in the) 1:15MJ40
account ending in number)
xx4148, in the name of)
Roderick D. Jessup)

In the Matter of the Seizure of)
All funds on deposit at First)
Citizens Bank in the account) 1:15MJ41
ending in number xx0396, in)
the name of Roderick Jessup)

In the Matter of the Seizure of)
All funds on deposit at Bank)
of North Carolina in the) 1:15MJ42
account ending in number)
xx8627, in the name of)
Roderick D. Jessup)

In the Matter of the Seizure of)
Funds up to \$11,200.00 on)
deposit at Bank of North) 1:15MJ43
North Carolina in the account)
ending in xx5185, in the name)
of Gate City Transp.,)
Sickle Cell Gala account)

In the Matter of the Seizure of)
2014 BMW X5,) 1:15MJ44
VIN 5UXKR6C51E0J73461)

In the Matter of the Seizure of)
All funds on deposit at Bank)
of North Carolina in the) 1:15MJ45
account ending in number)
xx2413, in the name of Gate)
City Transportation)

In the Matter of the Seizure of)
2014 Ford Econoline,) 1:15MJ49
VIN 1FTNS2EW9EDA12267)

In the Matter of the Seizure of)
2013 Ford E350 Econoline,) 1:15MJ50
VIN 1FBSS3BL3DDA64659)

In the Matter of the Seizure of)
2012 Ford E350 Econoline,) 1:15MJ51
VIN 1FBSS3BL1CDA76632)

In the Matter of the Seizure of)
2012 Ford E250 Econoline,) 1:15MJ52
VIN 1FTNS2EW9CDA21161)

In the Matter of the Seizure of)
2012 Ford E250 Cargo Van,) 1:15MJ53
VIN 1FTNS2EW0CDB20984)

In the Matter of the Seizure of)
2011 Ford E350 XLT -) 1:15MJ54
15 passenger,)
VIN 1FBSS3BL8BDA98092)

In the Matter of the Seizure of)
2012 Ford E250 Econoline,) 1:15MJ55
VIN 1FTNS2EW4DDA39018)

In the Matter of the Seizure of)
2012 Ford E350 Econoline,) 1:15MJ56
VIN 1FBSS3BL7CDA76599)

In the Matter of the Seizure of)
2012 Ford E250 Econoline,) 1:15MJ57
VIN 1FTNS2EW5CDB14646)

In the Matter of the Seizure of)
2012 Ford E250 Econoline,) 1:15MJ58
VIN 1FTNS2EWXCDB18059)

In the Matter of the Seizure of)
2013 Bus, VIN 1FDEE3FS8DDB04800) 1:15MJ59

In the Matter of the Seizure of)
2001 Chance 22 Seat Trolley,) 1:15MJ60
VIN 1C9S2HFS51W535229)

In the Matter of the Seizure of)
2001 Chance 22 Seat Trolley,) 1:15MJ61
VIN 1C9S2HFS31W535228)

In the Matter of the Seizure of)
2011 Ford Crown Victoria,) 1:15MJ62
VIN 2FABP7EV6BX128657)

In the Matter of the Seizure of)
2011 Ford E350 Econoline,) 1:15MJ63
VIN 1FBSS3BL3BDB37395)

In the Matter of the Seizure of)
2013 Ford E250 Econoline,) 1:15MJ64
VIN 1FTNS2EW0DDA08297)

In the Matter of the Seizure of)
2013 Bus, VIN 1FDEE3FS3DDB37400) 1:15MJ65

In the Matter of the Seizure of)
2011 Ford E250 Econoline,) 1:15MJ66
VIN 1FTNS2EW3BDB23859)

In the Matter of the Seizure of)
2013 Ford E250 Econoline,) 1:15MJ67
VIN 1FTNS2EW2DDA08298)

In the Matter of the Seizure of:)
2013 Ford E350 Econoline,) 1:15MJ68
VIN 1FBSS3BL9DDA61510)

In the Matter of the Seizure of)
2013 Ford E350 Econoline,) 1:15MJ69
VIN 1FBSS3BL4DDA61379)

In the Matter of the Seizure of)
2013 Ford E350 Econoline,) 1:15MJ70
VIN 1FBSS3BL9DDA71342)

In the Matter of the Seizure of)
2012 Ford E350 Econoline,) 1:15MJ71
VIN 1FBSS3BL8CDA98935)

In the Matter of the Seizure of)
2013 Ford E250 Cargo Van,) 1:15MJ72
VIN 1FTNS2EW0DDA30199)

In the Matter of the Seizure of)
2011 Ford E350 XLT -)
15 passenger,) 1:15MJ73
VIN 1FBSS3BL8BDB10418)

In the Matter of the Seizure of)
2011 Ford E250 Econoline,) 1:15MJ74
VIN 1FTNS2EW0BDB29571)

In the Matter of the Seizure of)
2011 Ford Crown Victoria,) 1:15MJ75
VIN 2FABP7EV5BX149676)

In the Matter of the Seizure of)
2013 Ford E350 Econoline,) 1:15MJ76
VIN 1FBSS3BLXDDA56042)

In the Matter of the Seizure of)
2014 Trailer,) 1:15MJ77
VIN 5VGGFG2421EL002571)

In the Matter of the Seizure of)
2013 Ford E350 Econoline,) 1:15MJ78
VIN 1FBSS3BL6DDA73811)

In the Matter of the Seizure of)
2013 Ford E350 Econoline,) 1:15MJ79
VIN 1FBSS3BL6DDA73923)

In the Matter of the Seizure of)
2012 Ford E350 Econoline,) 1:15MJ80
VIN 1FBSS3BL0CDA76797)

In the Matter of the Seizure of)
2012 Ford E350 Econoline,) 1:15MJ81
VIN 1FBSS3BL9CDA97194)

In the Matter of the Seizure of)
2012 Ford E350 Econoline,) 1:15MJ82
VIN 1FBSS3BL9CDA58556)

In the Matter of the Seizure of)
2011 Ford E350 EXL -) 1:15MJ83
15 passenger,)
VIN 1FBSS3BL4BDB11002)

In the Matter of the Seizure of)
2012 Ford E350 Econoline,) 1:15MJ84
VIN 1FBSS3BL5CDA76682)

In the Matter of the Seizure of)
2014 Ford E350 Econoline,) 1:15MJ85
VIN 1FTSS3EL8EDA59837)

ORDER

This matter is before this court for review of the Recommendation filed on January 18, 2017, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 76.) In the Recommendation, the Magistrate Judge recommends that Claimants' Motions for the Return of Seized Property in 1:15MJ32 to 1:15MJ38, 1:15MJ40 to 1:15MJ45, and 1:15MJ49 through 1:15MJ85 be denied and that Claimants' Motions to Dismiss in 1:15CV152 (Doc. 10) and 1:15CV506 (Doc. 9) be denied. The Recommendation was served on the parties to these actions on January 19, 2017. Claimants filed objections within the time limit prescribed by Section 636. Plaintiff filed a response to Claimants' objections.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1).¹ This court "may accept, reject, or modify, in whole or in part, the findings or recommendations

¹ This court reads the objections to extend to the order entered by the Magistrate Judge granting the motion to stay and denying the motion to lift stay (Doc. 76 at 30). These are non-dispositive matters and, as a result, this court's review is under a "clearly erroneous" standard. See 28 U.S.C. § 636(b)(1)(A).

made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." *Id.*

The court has appropriately reviewed Claimants' objections to the United States Magistrate Judge's Recommendation. This court has made a de novo determination which is in accord with the Magistrate Judge's Recommendation and finds the objections do not change the substance of the United States Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

The court notes that Claimants subsequently filed Motions to Supplement the Objections in each of these cases. Their request will be allowed to the extent that the additional objections will be considered. However, the court concludes that even if the additional objections are considered, the analysis and conclusion remain the same.

Nevertheless, this court has had the opportunity to review the status report and the ex parte attachment (Docs. 79, 80), both of which were filed following entry of the Magistrate Judge's recommendation. While the Magistrate Judge's order is eminently reasonable and appropriate under the circumstances, this court finds in light of the recent filings that the order should be modified to impose a stay for a definite period of time rather than the process in place, requiring an updated

status report and basis for continuing the stay as previously ordered.

The civil forfeiture action stayed by the Magistrate Judge's order is extensive, involving what appear to be substantial personal and business assets. This criminal investigation has apparently been pending since at least sometime during 2014 when the Medicaid Investigations Division began its investigation. (See Recommendation (Doc. 76) at 8.) The forfeitures began in February 2015 when seizure warrants were issued. (See id. at 10.) As described by another district court in United States v. \$307,970.00 in U.S. Currency, "the status of the criminal investigation is fluid, and no charging decision ha[s] been made. Under such circumstances, an indefinite stay might adversely affect claimants' due process rights." 156 F. Supp. 3d 708, 727 (E.D.N.C. 2016). As a result, "the stay, as requested, is too indefinite. See, e.g., Landis v. N. Am. Co., 299 U.S. 248, 257 (1936) ('The stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits, so far at least as they are susceptible to prevision and description.')." United States v. \$307,970.00, 156 F. Supp. 3d at 726-27. This court therefore modifies the terms of the stay to limit the period of the stay for approximately 120 days, until August 1, 2017. At

the conclusion of that time, the parties will meet, confer, and provide the court with a joint status report for moving forward with the case, on or before July 15, 2017. Should the government seek a continued stay of this case, any motion to that effect shall be filed no later than July 1, 2017. Claimants may file a response on or before July 15, 2017. No reply will be permitted.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation (Doc. 76) is **ADOPTED** except as modified herein.

IT IS FURTHER ORDERED that Claimants' Motions and Supplemental Motions for the Return of Seized Property in 1:15MJ32 to 1:15MJ38, 1:15MJ40 to 1:15MJ45, and 1:15MJ49 through 1:15MJ85 are **DENIED** and that Claimants' Motions to Dismiss in 1:15CV152 (Doc. 10) and 1:15CV506 (Doc. 9) are **DENIED**.

IT IS FURTHER ORDERED that the Magistrate Judge's order granting the stay is **AFFIRMED AS MODIFIED HEREIN**.

IT IS FURTHER ORDERED that Claimants' Motions to Supplement their Objections to the Order and Recommendation are **GRANTED** to the extent that the additional objections have been considered.

This the 31st day of March, 2017.

William L. Osten, Jr.

United States District Judge